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Caglar Gunyakti

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EXAMINER

MURDOUGH, JOSHUA A

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/692,868	Applicant(s) GUNYAKTI ET AL.	
	Examiner JOSHUA MURDOUGH	Art Unit 3621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgements

1. This action is responsive to Applicants' response received 30 April 2010.
2. This action has been assigned paper number 20100717 for reference purposes only.
3. Claims 1-25 are pending.
4. Claims 1-25 have been examined.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
7. Claim 1 recites "the computer- readable instructions, when executed, providing: a licensing component...a callable interface...a right-consumption component...and an information-retrieval component." Because of Applicants' recitation of "the computer- readable instructions when executed, providing" it unclear if the software components and interface are being executed or if there is a software component that, when executed, merely installs, or provides by some other means, the other software components. Because the first interpretation is consistent with the claims as previously presented, for reasons of applying the prior art, the Examiner has interpreted the claim in this manner.

8. Claims 1, 8, and 16, as amended recite “the same computer program.” Applicants discuss this amendment in their remarks on page 10. However, in these remarks, Applicants seem to equate “different programs” to “different versions” (Remarks, Page 10, Paragraph 2). However, one of ordinary skill in the art would recognize an interpretation with different versions as still being the same program. For example, Microsoft Word is a program, with versions including XP, 2003, etc. Therefore, the scope of the limitation “the same computer program” would not be understood to one of ordinary skill in the art.

9. The Examiner finds that because particular claims are rejected as being indefinite under 35 U.S.C. §112 2nd paragraph, it is impossible to properly construe claim scope at this time. However, in accordance with MPEP §2173.06 and the USPTO’s policy of trying to advance prosecution by providing art rejections even though these claim are indefinite, the claims are construed and the art is applied as much as practically possible.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1, 3, 5, 8-10, 16, 17 and 20, as understood by the Examiner, are rejected under 35 U.S.C. 103(a) as being unpatentable over Benson (US 6,047,242) in view of Stefik (US 5,629,980).

12. As to claims 1, 5, 8, 16, and 17 Benson shows:

a. A system comprising:

b. a processor (“486 (Intel 80486) 66 Mhz processor,” C 15, LL 30-31) for executing computer-executable instructions (“Statstest function,” C 15, L 23); and

c. a computer-readable storage medium (inherent, the customer device **102** stores protected software **103** and a keyfile **105** as well as the “ECP”) having encoded thereon computer-executable instructions (“ECP,” C 10, L 21) to support the enforcement of a license for a computer program **103** subject to use under a plurality of licenses each permitting different rights in the same computer program (Figure 3), the computer-readable instructions, when executed, providing:

d. a licensing component (“ECP,” C 10, L 21) common to the plurality of licenses for the computer program (“multiple customers...may share a common license server,” C16, LL 64-66), the licensing component maintains a license store **20** in which the licenses are stored, the licensing component further maintains a trust store **105** in which dynamic data is stored in a tamper-resistant manner (“the private keying material should be encrypted,” C 16, LL 19-20), wherein the dynamic data is utilized to validate the licenses (the keyfile is used to validate the license server, and thus, the license, C 13, LL 20-39), each license comprising at least one right in the computer program (execution on a single machine and not on multiple, CC 2-3, LL 66-8) and a set of data associated with said at least one right (“access control list,” C 3, L 6), the licensing component exposing a callable interface **24** to the computer program (Figure 2),

- e. an information-retrieval component which receives an identifier of said right from the computer program (“access” right, C 3, L 6) and provides said set of data, or information based on said set of data, to the computer program (list of programs that can access, C 3, LL 5-8).
13. Benson does not expressly show:
- f. a right-consumption component which receives an identifier of a right from the computer program and determines whether the right can be exercised; and
 - g. the rights-consumption component determines whether the right can be exercised based on whether the right is identified in a license.
 - h. determining act is based on whether the particular license or the right is non-expired.
 - i. determining act is based on whether the particular license has been consumed a number of times that exceeds a limit.
14. However, Stefik shows:
- j. a right-consumption component (comprising “usage rights language” described in C 17, L 62 through C 26, L 35) which receives an identifier (“Digital Work Rights,” 1501 Figure 15) of a right from the computer program and determines whether the right can be exercised (“define the digital work rights,” C 19, LL 12-19); and
 - k. the rights-consumption component determines whether the right can be exercised based on whether the right is identified in a license (Id.).
 - l. determining act is based on whether the particular license or the right is non-expired (“Time-Spec,” 1502, Figure 15).

- m. determining act is based on whether the particular license has been consumed a number of times that exceeds a limit (“Copy-Count,” 1502, Figure 15).
- 15. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Benson to include the usage right language of Stefik with the distribution of the software. The use of the usage rights language helps enable a variety of distribution and fee schemes (Stefik, C 18, LL 9-12).
- 16. As to claims 3 and 20 Benson further shows:
 - n. the rights-consumption component causes the licensing component to select a license based on one or more factors comprising:
 - o. whether the license store is associated with the computer program (A license cannot be selected if the license store is not associated with the program because there would be no valid license. C 9, LL 58-62); and
 - p. a conflict rule that determines which license to select from among a plurality of licenses that are associated with the computer program.
- 17. As to claim 9, Benson further shows:
 - q. said first behavior comprises allowing the computer program to execute (C 10, LL 51-54) , and wherein said second behavior comprises discontinuing execution of the computer program (C 1, LL 23-27).
- 18. As to claim 10, Benson further shows:

r. said first behavior comprises allowing the computer program to perform a first set of functions (execute, C 10, LL 51-54), and wherein said second behavior comprises allowing the computer program to perform a second set of functions that is non- identical to said first set of functions (making a backup copy, C 1, LL 30-31).

19. Claims 2, 6, 7, 15, 19, and 21-23, as understood by the Examiner, are rejected under 35 U.S.C. 103(a) as being unpatentable over Benson and Stefik as applied to claim 1 above, and further in view of Remer (US 2003/0088516).

20. As to claims 2 and 23 the Benson/Stefik combination teaches as set forth above in regards to claims 1 and 16.

21. Benson further shows:

s. said licensing component is common to and usable by a plurality of different computer programs (“multiple programs” C 9, LL 58-62) and said license store stores licenses for the plurality of different computer programs (Id.), the computer program being included among said plurality of different computer programs(Id.),

22. The Benson/Stefik combination does not expressly show:

t. said callable interface further comprises:

u. a handle-opening component that provides a handle to the computer program;

v. wherein the rights-consumption component receives the handle from the computer program and uses the handle to identify the computer program from which a call to the rights- consumption component is received; and

- w. wherein the computer program and licensing component are located on a single computing device.
23. However, Remer teaches:
- x. a handle-opening component that provides a handle to the computer program (through the operating system, WIN95 or WIN98; [0041] and Table 2; Both Windows 95 and 98 contain WinAPI which uses handles, therefore calls to other software would be done through these handles.);
 - y. wherein the rights-consumption component receives the handle from the computer program and uses the handle to identify the computer program from which a call to the rights- consumption component is received (Id.); and
 - z. wherein the computer program and licensing component are located on a single computing device [0026].
24. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have further modified the teachings of Benson to use handles on a single computing device to identify the computer program because handles allow for the program to be moved to a different location in memory through the updating of the address stored in the handle.
25. As to claims 6, 7, 15, and 19, the Benson/Stefik combination teaches as set forth above in regards to claims 1 and 16 but does not expressly show:
- aa. the computer program and the licensing component execute on a machine,
 - bb. wherein the rights-consumption component determines whether the right can be exercised based on whether the license is bound to said machine; and

cc. the computer program is associated with a product identifier, and wherein the rights-consumption component determines whether the right can be exercised based on whether the license is bound to said machine or to a class of machines of which said machine is a member.

26. However, Remer shows:

dd. the computer program ("software services" Abstract) and the licensing component ("licenses are maintained on the computer" Abstract) execute on a machine ("POS computer"),

ee. wherein the rights-consumption component ("licensing service agent" Abstract) determines whether the fight can be exercised based on whether the license is bound to said machine ("license that is uniquely identified with a specific computer" Abstract); and

ff. the computer program is associated with a product identifier [0028], and wherein the rights-consumption component determines whether the right can be exercised based on whether the license is bound to said machine ("license that is uniquely identified with a specific computer" Abstract) or to a class of machines of which said machine is a member.

27. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have further modified the teachings of Benson to use a product identifier to bind the license and software to a machine because this would ensure that the software is used on only one computer at a time.

28. Claims 4, 11-14, 18, 24, and 25, as understood by the Examiner, are rejected under 35 U.S.C. 103(a) as being unpatentable over Benson and Stefik as applied to claims 1, 8, and 16 above, and further in view of Zahir (US 6,115,777).

29. The Benson/Stefik combination teaches as previously discussed in regards to claims 1, 8, and 16.

30. Benson further shows:

gg. directing the operation of the computer program based on said set of data (list of programs that can access, C 3, LL 5-8).

31. The Benson/Stefik combination does not expressly teach:

hh. the licensing component does not enforce licensing constraints on the computer program, and wherein said callable interface further comprises:

ii. an asynchronous-context-initiator component that establishes a context for asynchronous processing and provides an identifier of said context to the computer program;

jj. wherein said rights-consumption component receives the identifier of said context from said computer program and processes a right-consumption request asynchronously in response to receipt of the identifier of said context;

kk. making a second call to a second method of said interface; and

ll. in response to said second call, receiving an asynchronous context;

mm. wherein said second call is made prior to said first call, wherein said first call is further parameterized by said asynchronous context, and wherein the computer program performs at least one action while the first call is handled asynchronously.

32. However, Zahir teaches the use of asynchronous context switching (title). In particular, Zahir teaches an asynchronously called interrupt and the change from the initial context to the context of the interrupt and back (Figures 8_1 and 8_2). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have further modified the teachings of Benson to include the asynchronous context switching of Zahir because the asynchronous processing allows for the most important processing to be given priority.

Response to Arguments

33. Applicant's arguments filed 30 April 2010 have been fully considered but they are not persuasive.

34. Applicants' arguments appear to rely on the interpretation of "computer program" or "the same computer program." For the reasons set forth above in the rejection under 35 U.S.C. § 112 2nd paragraph, the scope of these phrases is not understood by one of ordinary skill in the art. Therefore, arguments presented to this language are not persuasive.

Conclusion

35. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

36. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

37. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSHUA MURDOUGH whose telephone number is (571)270-3270. The Examiner can normally be reached on Monday - Thursday, 7:00 a.m. - 5:00 p.m.

38. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Fischer can be reached on (571) 272-6779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

39. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Joshua Murdough
Examiner, Art Unit 3621

/ANDREW J. FISCHER/
Supervisory Patent Examiner, Art Unit 3621